

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TESLA MOTORS, INC., a Delaware corporation,

Plaintiff,

v.

RUTH JOHNSON, in her official capacity as Secretary of State and Chief Motor Vehicle Administrator; BILL SCHUETTE, in his official capacity as Attorney General, and RICK SNYDER, in his official capacity as Governor,

Defendants.

Case No. 16-cv-01158

Hon. Janet T. Neff

**PLAINTIFF TESLA'S MOTION FOR
LEAVE TO FILE A SECOND AMENDED
COMPLAINT**

Tesla Motors, Inc., moves under Federal Rule of Civil Procedure 15(a), for leave to file a Second Amended Complaint (attached as Exhibit A). The modest changes from the First Amended Complaint (1) document the State's recent denial of Tesla's application to register a vehicle repair facility, and (2) make clear that Tesla's challenge to Mich. Comp. Laws Ann. § 445.1574 includes a challenge to sub-provision (1)(h), if applicable as the State contends. In accordance with Local Rule 7.1(d), Defendants' counsel agrees that Tesla's motion should be granted and the Second Amended Complaint accepted for filing.

In further support of this motion, Tesla states:

1. On September 12, 2016, the Michigan Department of State denied Tesla's application for a new-vehicle sales license.
2. On September 22, 2016, Tesla filed its initial Complaint, challenging the State's denial of Tesla's application for a new-vehicle sales license, and the State's inaction on Tesla's applications for a used-vehicle sales license and to register a vehicle repair facility.

3. On September 21, 2016, the Department denied Tesla’s application for a used-vehicle sales license, which Tesla received shortly thereafter.

4. On October 13, 2016, Tesla filed its First Amended Complaint to add allegations regarding the State’s denial of Tesla’s application for a used-vehicle sales license.

5. On December 19, 2016, the Department denied Tesla’s application to register a vehicle repair facility.

6. Tesla now seeks leave of the Court to file a Second Amended Complaint that includes allegations regarding the State’s denial of the vehicle-repair-facility application. The Second Amended Complaint also reflects minor revisions to respond to the State’s contention that it denied Tesla’s application for a new-vehicle sales license pursuant to Mich. Comp. Laws Ann. § 445.1574(1)(h).

7. Tesla files its motion within the time to move to amend the pleadings under the Case Management Order entered on January 6, 2017.

8. Rule 15(a) provides that leave to amend shall be freely given when justice requires. The Supreme Court has declared that “this mandate is to be heeded.” *Forman v. Davis*, 371 U.S. 178, 182 (1962). If “the underlying facts or circumstances relied upon by a plaintiff may be a proper source of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Id.* at 182.

9. Tesla has not delayed in bringing this motion to amend. To the contrary, the Case Management Order anticipated that either party could timely move to amend the pleadings, and granting Tesla’s motion has no risk of unduly increasing discovery or delaying trial.

10. Defendants will not be prejudiced by the filing of Tesla’s Second Amended Complaint. Tesla is not changing any of its legal theories. In fact, Tesla’s initial Complaint and

First Amended Complaint anticipated that the State would deny Tesla's application to register a vehicle repair facility, even though that denial had not yet happened. In addition, Tesla's initial Complaint and First Amended Complaint challenged *all* of Mich. Comp. Laws § 445.1574, to the extent it resulted in denial of Tesla's various applications. The Second Amended Complaint merely specifies that sub-provision (1)(h) is included within that challenge.

11. Defendants have stipulated to Tesla's request that it be allowed to file its Second Amended Complaint.

WHEREFORE, Tesla respectfully requests that the Court grant this motion and accept for filing the Second Amended Complaint attached as Exhibit A.

Dated: January 27, 2017

/s/John J. Bursch

John J. Bursch (P57679)
BURSCH LAW PLLC
9339 Cherry Valley Ave SE, #78
Caledonia, Michigan 49316
616.450.4235
jbursch@burschlaw.com

Counsel for Tesla Motors, Inc.

Of counsel:
O'MELVENY & MYERS LLP
Daniel Petrocelli
1999 Avenue of the Stars, 8th Floor
Los Angeles, CA 90067
(310) 553-6700
dpetrocelli@omm.com

Anne Huffsmith
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
(415) 984-8934
ahuffsmith@omm.com

CERTIFICATE OF SERVICE

This certifies that the foregoing document was served January 27, 2017, by electronic mail using the Eastern District of Michigan's Electronic Case Filing system on: DJ Pascoe and Matthew Payok.

/s/John J. Bursch
John J. Bursch (P57679)
